

§ 402.140 How a request for a record is processed.

(a) In general, we will make a determination as to whether a requested record will be provided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request by the appropriate official (see § 402.135). This 20-day period may be extended in unusual circumstances by written notice to you, explaining why we need additional time, and the extension may be for up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If we cannot process your request within 10 additional days, we will notify you and provide you an opportunity to limit the scope of the request so that it may be processed within the additional 10 days, or we will provide you with an opportunity to arrange with us an alternative time frame for processing the request, or for processing a modified request.

(c) *Multi-tracking procedures.* We will establish four tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time:

(1) Track 1—Requests that can be answered with readily available records or information. These are the fastest to process.

(2) Track 2—Requests where we need records or information from other offices throughout the Agency but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) Track 3—Requests which require a decision or input from another office or agency and a considerable amount of time will be needed for that, or the request is complicated or involves a large

number of records. Usually, these cases will take the longest to process.

(4) Track 4—Requests that will be expedited.

(d) We will provide for expedited access for requesters who show a “compelling need” for a speedy response. The EFOIA describes compelling need as when the failure to obtain the records on an expedited basis could reasonably be expected to pose “an imminent threat to the life or physical safety of an individual,” or when the request is from a person primarily engaged in disseminating information (such as a member of the news media), and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” We also will expedite processing of a request if the requester explains in detail to our satisfaction that a prompt response is needed because the requester may be denied a legal right, benefit, or remedy without the requested information, and that it cannot be obtained elsewhere in a reasonable amount of time. We will respond within 10 days to a request for expedited processing and, if we decide to grant expedited processing, we will then notify you of our decision whether or not to disclose the records requested as soon as practicable.

[63 FR 35133, June 29, 1998]

§ 402.145 Responding to your request.

(a) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. We will make reasonable efforts to search for records manually or by automated means, including any information stored in an electronic form or format, except when such efforts would significantly interfere with the operation of our automated information system. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of

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1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101-11.4; and the General Records Schedules of the National Archives and Records Administration.

(b) *Furnishing records.* We will furnish copies only of records that we have or can retrieve. We are not required to create new records or to perform research for you. We may decide to conserve Government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. For instance, we could extract sections from various similar records instead of providing repetitious information. We generally will furnish only one copy of a record. We will make reasonable efforts to provide the records in the form or format you request if the record is readily reproducible in that form or format.

(c) *Deletions.* When we publish or otherwise make available any record, we may delete information that is exempt from disclosure. For example, in an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names and other identifying details may be deleted. When technically feasible, we will indicate the extent of deletions on the portion of the record that is released or published at the place of the deletion unless including that indication would harm an interest protected by an exemption. If we deny a request, in whole or in part, we will make a reasonable effort to estimate the volume of any requested matter that is not disclosed, unless such an estimate would harm an interest protected by an exemption.

(d) *Creation of records.* We are not required to create new records merely to satisfy a request. However, we will search manually or by automated means to locate information that is responsive to the request. If extensive computer programming is needed to respond to a request, we may decline to commit such resources, or if we agree to do so, we may charge you for the reasonable cost of doing so. We do not mean that we will never help you get information that does not already exist in our records. However, diverting staff

and equipment from our other responsibilities may not always be possible.

[63 FR 35133, June 29, 1998]

§ 402.150 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and it did not apply, or applied differently, in the previous situation(s) or if the previous release was unauthorized. See § 402.45(d) regarding records in electronic reading rooms.

(b) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

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§ 402.155 Fees to be charged—categories of requests.

Paragraphs (a) through (c) of this section state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, we will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, we will charge you only for the duplication of documents. Also, we will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) or (b) of this section, then we will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search